Travel Agents Association of New Zealand

Comments to the New Zealand Commerce Commission on the Proposed Air New Zealand/Qantas Alliance

February 2003

About our organisation

TAANZ was founded in 1962 and is the Trade Association representing travel agents and the travel agent distribution system in New Zealand. Over 90% of travel agents in New Zealand are members of our Association and we have 533 full and branch member locations. Travel agents process approximately $2.5 billion in overseas and domestic travel business which is approximately 80% of the total international travel business and in excess of 50% of the domestic travel business.

In order to become a member of TAANZ, applicants must meet, and continue to meet (once they are members) strict membership and bonding criteria including:

- Staff: a minimum number of staff at each location must hold qualifications that meet the national standard;
- Premises must be of a certain standard and suitable for professionally meeting the needs of customers;
- bonding criteria, including the requirement to provide a bond/security to protect the consumer and airlines under the terms of the TAANZ Airline Agreement;
- To undergo an annual financial review with the independent TAANZ Bonding Authority in order to meet the financial and bonding criteria;
- To adhere to the TAANZ Code of Ethics and Practice and the Constitution and Rules.

TAANZ is the guardian of the consumer. TAANZ as an organisation and TAANZ members individually aim to provide consumers with valued service, expert unbiased advice and the necessary skills and knowledge to satisfy consumer expectations. If they do not do this consumers will look elsewhere e.g. go direct to the supplier.

The travel agent distribution system is the only one which offers the consumer choice as all suppliers promote their own services. It is of the utmost importance to consumers and travel agents alike to preserve a competitive market for air services and for the sale of air services and to see that the travel agent distribution system is appropriately remunerated for the work done on behalf of suppliers.

About our submission

TAANZ welcomes the opportunity to comment on the proposed strategic alliance between Air New Zealand and Qantas.

This submission consists of the following:

1. A summary of the implications of the proposed joint airline operation for TAANZ members and others involved in the market for the sale of airline services.

2. The link between maintaining a healthy and viable travel agency distribution system and maintaining competition in the international air services market.

3. A brief statement as to what type of market for the supply of airline services is in the best interests of the public.

4. A brief assessment of some of the adverse impacts of the proposed alliance on the market for the supply of airline services.

1. The implications of the proposed joint airline operation for TAANZ members and others involved in the market for the sale of airline services

If the application was to be approved and Air New Zealand and Qantas were permitted to operate the Joint Airline Operation those involved in the sale of airline services in New Zealand will be placed in a very vulnerable position. Safeguards would need to be written into any approval to protect TAANZ members and others involved in the sale of such services.

The Joint Airline Operation would create a monopoly situation with no competition in the market for the supply of domestic air services within New Zealand, and no effective competition in the market for Trans Tasman air services and in the market for the supply of air services in the Pacific.

TAANZ members and other non airline participants involved in the market for the sale of airline services have in recent years had to deal with radical changes in the market they operate in. For example, Air New Zealand has cut commissions and changed the basis upon which it pays commission. During this time Air New Zealand has made it abundantly clear that it does not accept the proposition that it has any obligation to pay travel agents for the work that travel agents do on Air New Zealand's behalf in selling its services. Further, as is alluded to in the following paragraphs, Air New Zealand has competed aggressively and in many cases unfairly with travel agents in the market for the sale of its services.

Some travel agents have been forced out of business, but most have been able to survive because of the fact that there has been healthy competition between (at least) two significant players on the supply side and the travel agents have been able to offer a choice of carrier to the consumer. If there is effectively no choice of supplier then the travel agents would be at the mercy of the one monopolistic supplier.

Air New Zealand has over recent years become an active and aggressive competitor with travel agents on the sale and distribution of air services. The industry is perhaps unique in that the carriers do compete directly for sales with their agency distribution system.

In addition to cutting commissions and in some cases, on domestic sales, removing them all together, Air New Zealand has been very aggressive in competing with travel agents for the sale of its services. The following are examples of this:

- It has mounted sustained and expensive direct marketing campaigns aimed at encouraging customers to book directly with Air New Zealand either through use of the internet or through the use of Air New Zealand's call centres or travel centres.

- It has utilised its position as a supplier of air services to make certain fares available at cheap rates only to those that book with it directly (i.e. not booked through an agent).

- It has embarked upon marketing programs with credit card companies which facilitate air points where fares are purchased utilising credit cards, some of which fares are not available for purchase through agents, or where they are available for purchase through agents they are only transactable on terms which seriously disadvantage the agent.

- Air New Zealand now charges a GDS channel surcharge to customers who purchase airline tickets through agents. This charge was previously incorporated as a cost component in the ticket. Air New Zealand does not charge GDS fees where fares are booked directly through Air New Zealand on the internet or through their call centres and travel centres.

- Air New Zealand has sought to obtain Commerce Commission approval in Australia and an exemption from the anti competitive provisions of the Commerce Act in New Zealand to enable it to collude with Star Alliance member airlines on the setting of fare structures and the marketing of the same directly to a number of identifiable classes of customers and potential customers to the detriment of the travel agents.

- Air New Zealand has actively gone to the corporate market and directly approached significant numbers of large corporates offering terms for the cost of supplying their total air transport needs which are not procurable by travel agents from Air New Zealand in the marketplace.

Many TAANZ members now believe that Air New Zealand's actions, rather than being supportive of the distribution and sales industry, have been intentionally destructive of it. Many TAANZ members now see Air New Zealand as being the greatest single threat to their ability to survive and earn a reasonable living from the industry.

The feeling amongst TAANZ agents was so strong that at its 40th anniversary conference in November 2002 the Board of TAANZ, in an unprecedented step, felt unable to accept a major offer of sponsorship for the conference from Air New Zealand.

There is a real and justifiable concern amongst TAANZ members that should approval for the Joint Airline Operation be given, many of them would not be able to survive in business. For this not to be the case there would need to be a significant change in the approach of Air New Zealand to the distribution/sale of the Joint Airline Operation services and there is absolutely nothing which would indicate that this is likely to occur. On the contrary, the probability is that, without the moderating influence that strong competition on the supply side provides, Air New Zealand would be even more aggressive and destructive to the travel agency community. If the Commission were to give approval to the Joint Airline Operation travel agents would be powerless to fight back. They would not be able to offer consumers a choice. It would therefore be essential in the event that the Commerce Commission gives its consent to the Joint Airline Operation for the Commission to include conditions in that consent which adequately protect participants in the travel distribution/sale market.

TAANZ would see the type of protections that would need to be included in the event that approval of the Joint Airline Operation was given as including:

- A requirement that the Joint Airline Operation recognise and implement the principle that travel agents be adequately rewarded for the work undertaken by those agents on behalf of the airlines in selling and distributing the services of the airline supplier.

- A requirement that travel agents must not be disadvantaged in any way, compared to the Joint Airline Operation airlines, and any other participant in the sales/distribution market when accessing fares and product from Air New Zealand and Qantas. They must be able to compete on even terms with the Joint Airline Operation airlines on the sales side. By way of example, the GDS charges would in the future need to be included in the cost of the ticket, as they previously were, thus removing a cost differential which currently gives an unfair advantage to Air New Zealand when it is instrumental in selling its own product.

- A requirement that an independent, impartial investigator be appointed to receive, consider, investigate and determine complaints that the Joint Airline Operation airlines are improperly using their monopoly position on the supply side to provide them with advantages in the market for the sale of their services. The investigator would need to have power to sanction the Joint Airline Operation airlines and to award compensation to any disadvantaged travel agents.

Without protections of this type the outlook for TAANZ members and others involved in the distribution of airline product in New Zealand would be bleak. If the Commerce Commission were to sanction a monopoly on the supply side in relation to the key markets, the Commission would have significantly reduced the ability of the agent to survive by offering the customer alternatives and choice. The Commission cannot approve the Joint Airline Operation without requiring that the travel distribution market be protected.

TAANZ also has real concerns about Qantas Holidays and possible dominance in both the wholesale and retail market for the sale of packaged holidays particularly as airlines are joining forces in an internet/web booking portal (Zuji).

2. The link between maintaining a healthy and viable travel agency distribution system and maintaining competition in the international air services market

It has been recognised by the ACCC that a strong travel agency industry in Australia is a very important factor in preserving and maintaining competition in the market for the supply of international air services.

The ACCC's view was summarised in this way by Mr Ross Jones, Commissioner in a speech given to the Australian Federation of Travel Agents Conference, 27 July 2002 in which reference was made to views formed by the Commission in reaching its Decision A90408 dated 13 May 2002:

> *"The Commission formed the view after careful consideration of these developments that it was important for Australia to have an efficient, functioning travel agent industry.*
>
> *The Commission did not form this view because it wanted agents to be able to compete more effectively with airlines in a market where airlines are under cost pressures and increasingly looked to direct sales through call centres and online media.*
>
> *The Commission formed this view because the travel agent industry is a critical factor in achieving effective competition between airlines, especially in the international market. The fact is that around 80% international airline travel is sold through travel agents.*
>
> *Few airlines other than Qantas directly advertise or promote sales of international travel in Australia v. retail outlets … Put simply, for most international airlines other than Qantas, their presence in Australia is too small to permit advertising promotion other than through agents.*
>
> *Any weakness in the travel agent industry could accordingly be reflected in a reduction in the ability of airlines to distribute their product and possible*

reduced competition between airlines. This would be to the advantage of a few well placed airlines including Qantas….

The Commission was also aware that agents and airlines are increasingly in competition in the retail air transport market, especially at the domestic level but increasingly at the international level too."

In the same speech, Mr Ross Jones referred to the power held by airlines over the agency industry and the ability this conferred on airlines to make structural alterations to their own advantage. At p.15 of the speech he stated:

"The Commission was also concerned at the power held by airlines over the agency industry and its structure through their ability to grant plates."

Air New Zealand, Qantas, and the other airline members of IATA already enjoy significant exemptions from the application of the anti competitive provisions of the Commerce Act which enables them to collude together to (amongst other things) determine and fix standard terms and conditions for the appointment of agents and the issuing of airline plates to agents.

In its Draft Determination A90791, the ACCC observed:

"6.32 Whenever suppliers of a product or service collaborate on the distribution of those products or services to the retail market there is the potential for the arrangements to impact on competition in the retail market.

6.33 When those suppliers account for over 95% of the market as is the case with IATA member airlines and international passenger air travel to and from Australia the potential for anti-competitive behaviour is further heightened. When those same suppliers also compete in the retailing of the services, as is the case with airlines, an additional anti-competitive dimension is raised."

The same point was made by the NZCC in *Air New Zealand, Ansett Holdings and Bodas Pty Limited* Decision No 278, 3 April 1996. At para.155 the Commission said:

"Air Travel is a major segment of the business sold by travel agents. To be able to compete, travel agents need access to schedules, reservations and ticketing, for the major airlines operating in and to and from New Zealand. Depending upon

ownership and other informal relationships, the airlines could influence the terms under which travel wholesalers on-supply services to retail travel agencies."

It is significant that the comments made by Mr Ross Jones were made with the full recognition of the current economic difficulties faced by airlines and the ability of airlines to look increasingly to direct sales through call centres and the internet. It is clear he contemplated considerable caution being exercised by the Commission to ensure that the use by airlines of those particular powers [the ability to direct sell and to ticket online] should not become a means of weakening the position of travel agents.

The comments are even more significant for the New Zealand distribution market because Air New Zealand has been far more aggressive in the New Zealand market than Qantas has been in Australia. The airlines have demonstrated markedly different approaches in this regard with Qantas being agent friendly. Qantas by its actions and its statements has valued and supported the agency network in Australia and New Zealand.

Any reduction in the ability of travel agents to compete with airlines in the market for distribution of airline product has, as the ACCC has recognised, serious implications for consumer choice and competition amongst airlines.

3. The best interests of the travelling public

TAANZ is of the view that the interests of the members of the public, the ordinary New Zealand citizen, as users of the airline services affected by the application make up a significant component in the assessment of "the public good" aspects of the application.

TAANZ is clearly of the view that the interests of the New Zealand public as users of these services are clearly served by a competitive market place, by there being generous capacity, and by having a market in which there is consumer choice.

TAANZ is not aware that any party including the applicants would seriously challenge this perspective. A look back at what happened in the New Zealand market when competition was introduced, and currently an examination of the comparison between the longhaul markets in which there is effective competition with those in which there is not, will confirm this.

TAANZ is therefore of the view that the applicants must produce compelling evidence of the need to create a monopoly situation of the type envisaged by the Joint Airline Operation before it would be open for the Commission to seriously consider it as a viable option. In the absence of such compelling evidence the Joint Airline Operation is clearly not in the public good.

TAANZ agrees with the view that it is in the public good for Air New Zealand to continue to operate as a viable international and domestic airline. TAANZ believes that it is very important that New Zealand has its own airline which promotes New Zealand as a destination for overseas tourists and significant benefits flow to New Zealand and New Zealanders from this.

If the Commission was to find that there was a strong likelihood that Air New Zealand will not be able to continue to survive as an international airline in the absence of some form of strategic alliance with Qantas then wider elements of the aspect of public good should in TAANZ's view be considered.

TAANZ does not feel qualified to comment on this aspect of the application but urges the Commission to closely scrutinise:

(i) the extent to which, if at all, competition in the domestic air services market in New Zealand, or on the Trans Tasman air services market or the Pacific air services market was a causative factor in the financial crisis faced by Air New Zealand some 18 months ago;

(ii) other options for Air New Zealand which would involve less detriment to the New Zealand public.

4. Adverse impacts of the proposed alliance

It is important to note that what is proposed is that Qantas and Air New Zealand will co-ordinate the following services and activities in respect of the Joint Airline Operations (JAO) networks.

(i) All aspects of the pricing of the applicant's passenger and freight services, including setting fares, rebates, levies and promotions, level of service fees, development of new fare products, pricing and promotions of holiday destinations, commissions and agency incentives and joint tendering for corporate and government accounts. The applicants will also co-ordinate procedures for pricing and inventory management.

(ii) Exchange of information on schedules, financial information, pricing, yields, seat availability, sales and other information to enable co-ordination of the aspects of the parties respective businesses referred to in (i) above.

(iii) Operations, routing, capacity, frequencies, aircraft types, connection requirements and range of times for any service provided as part of the JAO networks.

(iv) Reciprocal codeshare rights with each other for flights operated as part of the JAO networks. Air New Zealand will also be able to codeshare on flights operated by Qantas that are not part of the JAO networks where such flights reasonably connect to JAO network flights.

(v) Facilitate Qantas Holiday's maximising the provision of new tourism products which utilise the JAO networks and promote New Zealand and Australia as a dual destination.

(vi) Rights for members of each applicant's frequent flyer programmes to accrue and redeem frequent flyer points on flights operated by the other.

Price/capacity

Increases in prices predicted. There will be a consolidation of capacity. New entrants will be disadvantaged.

Service standards

Declining standards of service, capacity and routes. There will be no guarantee of Qantas capacity.

Innovation

Static unless standards are benchmarked.

Distribution systems

Protection for the Distribution system/travel agents would be required as outlined previously in this submission.

There would be ongoing pressure from suppliers to reduce the costs of distribution. The consolidation of the two airlines into one joint operation would probably result in the removal of remuneration for travel agents from domestic fares from the Alliance carriers and further reductions in remuneration for the sale of overseas flights. Travel agents would have less ability and less opportunity to provide services that enable consumers to make choices about competing products. The financial pressures placed on travel agents would mean that for many their viability would be threatened and the ability of travel agencies to provide independent and unbiased information on products and services would be reduced. The distribution system might well end up being controlled by the dominant supplier who would steer consumers towards its own product.

Returns

Improve dramatically. There is the probability that airlines would sustain a significantly higher level of profitability at the expense of the consumer, agents/tour operators/the distribution system with the loss of welfare to the country as a whole.

Public good

TAANZ can find no obvious, credible or demonstrable experience elsewhere to show that this approach would provide consumers with benefits in terms of service or prices or any benefit whatsoever. There would be scope for extraordinary profit and price escalation as airports drive service prices upwards as a percentage of airline income. TAANZ is concerned that should Air New Zealand and Qantas be part of the One World Global Alliance this could seriously effect the way overseas visitor customers make purchasing decisions should they be part of the Star Alliance Scheme. The impact of this may be significant if, as is probable, it becomes difficult for overseas based consumers to use their air points to obtain tickets to fly into New Zealand.

Pricing collusion and the loss of competition in the domestic, Trans Tasman and Pacific market would result from the proposed Alliance. Market dominance by the Joint Airline Operation would create barriers that would make it harder for new carriers (including VBAs) to establish themselves in the New Zealand market.

The removal of competition from these markets would lead to declining service standards. It may also result in there being insufficient capacity to meet the reasonable needs of the market. The consumer, the wider industry and the country as a whole would suffer as a consequence.

Distribution systems have a key role to play in ensuring a competitive air services market. This has been reinforced by a recent ACCC decision made on May 2002. TAANZ is concerned that the Alliance would totally dominate the market for the supply of air services within New Zealand and Trans Tasman and in the Pacific and that that dominance would enable the Alliance to control the distribution side of the industry. This would have a negative effect on the consumer's ability to make an informed choice and would lead to higher prices, less convenient routing structure and a less effective market.

Conclusion

1. The best interests of New Zealand and the New Zealand public are served by competition in the air services markets, domestic, Trans Tasman and Pacific.

2. TAANZ is fundamentally opposed to the proposed Joint Airline Operation because it removes all effective competition in these markets both currently and for the foreseeable future. As such it is clearly not in the public good.

3. If Qantas is to be given approval to take a shareholding in Air New Zealand, conditions must be imposed on Qantas and Air New Zealand which prevent the two airlines from operating in the

manner they propose in their application for approval for a Joint Airline Operation.

4. If Air New Zealand is able to establish that its continued existence as a viable airline is under threat then other options which involve far less detriment to the New Zealand public are available to it and should be investigated.

TAANZ
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